

Message Text

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E.O. 11652:GDS

TAGS: ENRG, ETRD, VE

SUBJECT: VENEZUELAN COMPLAINT REGARDING U.S. OIL IMPORT
LICENSE FEES

REF:CARACAS 2797, CARACAS 3048

1. V"NEZUELAN AIDE-MEMOIRE CONTENTS THAT PRESENT U.S.
SYSTEM OF LICENSE FEES ON PETROLEUM AND PETROLEUM PRODUCTS
IS A VIOLATION OF THE RECIPROCAL TRADE AGREEMENT BETWEEN
THE U.S. AND VENEZUELA, AS AMENDED BY A JUNE 26, 1972
EXCHANGE OF NOTES. AS POINTED OUT IN VENEZUELAN NOTE, THE
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PRESENT SYSTEM OF LICENSE FEES ON IMPORTED OIL CAN BE
TRACED BACK TO PRESIDENTIAL PROCLAMATION NO. 4210.
LICENSE FEES ON CRUDE OIL ARE PRESENTLY 21 CENTS PER BARREL;
LICENSE FEES ON PETROLEUM PRODUCTS ARE ,RESENTLY 63 CENTS
PER BARREL. THE BURDEN OF THE FOREGOING FEES, IS, HOW-
EVER, LESS THAT IT APPEARS BECAUSE: 1) THE SYSTEM
PROVIDES FOR ALLOCATION OF FEE EXEMPT LICENSES, GRANTED ON

THE BASIS OF IMPORTERS' HISTORICAL NEEDS AND 2) CUSTOMS
DUTIES PAID ARE CREDITED AGAINST LICENSE FEES PAYABLE.

2. DEPARTMENT LAWYERS HAVE EXAMINED THE VENEZUELAN AIDE-
MEMOIRE AND THE TRADE AGREEMENT AS AMENDED AND HAVE DRAFTED
THE FOLLOWING RESPONSE:

COMPLIMENTS AND REFER TO THE VENEZUELAN AIDE-MEMOIRE OF
MARCH 28, 1978 AND THE UNITED STATES VENEZUELAN RECIPROCAL
TRADE AGREEMENT, SIGNED AT CARACAS NOVEMBER 6, 1939 AS
AMENDED BY A SUPPLEMENTARY TRADE AGREEMENT SIGNED AT
CARACAS AUGUST 28, 1952 AND EXCHANGES OF NOTES AT CARACAS
JULY 15 AND 23, 1963 AND JUNE 26, 1972. UNITED STATES
OFFICIALS HAVE EXAMINED THE RECIPROCAL TRADE AGREEMENT AS
SUPPLEMENTED AND AMENDED AND HAVE CONCLUDED THAT THE
PRESENT UNITED STATES SYSTEM OF LICENSE FEES ON IMPORTS
OF PETROLEUM AND PETROLEUM PRODUCTS IS NOT A VIOLATION OF
THIS AGREEMENT. IMPOSITION OF THE PRESENT SYSTEM OF
LICENSE FEES IS BASED ON THE DOMESTIC AUTHORITY OF SECTION
232(B) OF THE TRADE EXPANSION ACT OF 1962. THIS STATUTORY
AUTHORITY IS DIRECTLY LINKED TO CIRCUMSTANCES THREATENING
TO IMPAIR THE NATIONAL SECURITY OF THE UNITED STATES.
THE SYSTEM OF LICENSE FEES WAS IMPOSED PURSUANT TO A
PRESIDENTIAL REVIEW OF THE STATUS OF IMPORTS OF PETROLEUM
AND ITS PRIMARY DERIVATIVES IN RELATION TO THE NATIONAL
SECURITY. THE ACTIONS REFLECTED IN PROCLAMATION 4210 AND
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SUBSEQUENT MODIFICATIONS WERE TAKEN ON THE BASIS OF A
FINDING THAT PETROLEUM AND PETROLEUM PRODUCTS WERE BEING
IMPORTED INTO THE UNITED STATES "IN SUCH QUANTITIES OR
UNDER SUCH CIRCUMSTANCES AS TO THREATEN TO IMPAIR NATIONAL
SECURITY." AS A MEASURE TAKEN TO PROTECT ESSENTIAL SECURITY
INTERESTS OF THE UNITED STATES, THE PRESENT SYSTEM OF
LICENSE FEES ON IMPORTED OIL IS SUBJECT TO THE LAST OF THE
FIVE EXCEPTIONS CONTAINED IN THE FIRST PARAGRAPH OF ARTICLE
XVI OF THE RECIPROCAL TRADE AGREEMENT AS SUPPLEMENTED, AND
AMENDED, AND IS THUS NOT INCONSISTENT WITH THE PROVISIONS
OF THAT AGREEMENT.

COMPLIMENTS"

4. BEGIN COMMENT. IN REVIEWING THE NEGOTIATING HISTORY OF
THE 1972 EXCHANGE OF NOTES, DEPARTMENT LAWYERS HAVE NOTED
AN AMBIGUITY IN THE EXCHANGE OF NOTES AND IN THE NEGOTIA-
TING RECORD OF THE EXCHANGE. THE AMBIGUITY RAISES THE
ISSUE OF WHETHER THE PARTIES INTENDED THE 1972 EXCHANGE OF
NOTES TO TERMINATE ALL PROVISIONS OF THE UNDERLYING TRADE
AGREEMENT EXCEPT THOSE SPECIFICALLY REAFFIRMED IN THE
EXCHANGE OR WHETHER ONLY THE PROVISIONS OF THE UNDERLYING

AGREEMENT EXPRESSLY TERMINATED WERE TO BE TERMINATED. IN THE LATTER CASE THE NATIONAL SECURITY EXCEPTION RELIED ON IN THE ABOVE AIDE-MEMOIRE WOULD BE APPLICABLE. IN THE FORMER CASE THE VENEZUELANES COULD ARGUE THAT NATIONAL SECURITY EXCEPTION IS NO LONGER APPLICABLE AND THAT IMPORT FEES ARE MONETARY EXACTIONS INCONSISTENT WITH THE TERMS OF ARTICLE II OF THE AGREEMENT.

5. POLITICAL BACKGROUND EXPLAINS THE CONFUSING FORMULATIONS EMBODIED IN THE 1972 EXCHANGE. ON DECEMBER 31, 1971 THE GOVERNMENT OF VENEZUELA GAVE NOTICE OF TERMINATION OF THE ENTIRE TRADE AGREEMENT. THE U.S. OIL POLICY COMMITTEE WAS CONCERNED BECAUSE AGREEMENT WAS THE SOLE BASIS FOR BINDING U.S. TARIFFS ON CERTAIN PETROLEUM PRODUCTS. A
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LAPSE IN THE AGREEMENT WOULD HAVE HAD THE EFFECT OF RAISING THE RATES OF DUTY ON THESE ITEMS TO THE HIGHER TSUS COLUMN 2 STATUTORY RATES. THIS WAS DEEMED UNDESIRABLE AT THAT TIME BECAUSE IT WOULD HAVE HAD THE EFFECT OF RAISING DOMESTIC PETROLEUM PRICES. THE DECISION WAS MADE THAT THE U.S. SHOULD "URGE THE GOVERNMENT OF VENEZUELA TO AGREE TO TERMINATION OF ONLY ITS TARIFF CONCESSION SCHEDULE AND PORTIONS OF THE U.S. SCHEDULE UNDER THE TRADE AGREEMENT, LEAVING INTACT THE GENERAL PROVISIONS OF THE AGREEMENT AND THE U.S. CONCESSIONS OF PETROLEUM., CIRCULAR 175 OF JUNE 14, 1972.

6. THE IMPORTANCE OF TERMINATING ONLY PART OF THE TRADE AGREEMENT FROM THE U.S. SIDE STEMMED FROM THE FACT THAT AUTHORITY TO CONCLUDE AND PROCLAIM NEW TRADE AGREEMENTS UNDER THE TRADE EXPANSION ACT OF 1962 HAD LAPSED, AND THE PRESIDENT DID NOT AT THAT TIME HAVE SPECIFIC STATUTORY AUTHORITY TO CONCLUDE NEW TRADE AGREEMENTS ESTABLISHING TARIFF CONCESSIONS OR TO AMEND EXISTING AGREEMENTS. IT WAS CONCLUDED, HOWEVER, THAT THE PRESIDENT DID HAVE CONSTITUTIONAL AUTHORITY TO TERMINATE EXECUTIVE AGREEMENTS.

7. THE VENEZUELANES, APPARENTLY WERE SATISFIED WITH SUBSTANCE OF U.S. POSITION BUT, WERE CONCERNED POLITICALLY THAT THEY NOT BE PERCEIVED AS "BACKING OFF" UNDER US PRESSURE THEIR EARLIER BLANKET DENUNCIATION. THE EXCHANGE OF NOTES EVENTUALLY AGREED TO THUS REFLECTED A FORMULATION THAT EACH PARTY APPARENTLY FELT COULD BE INTERPRETED BY IT IN ACCORDANCE WITH ITS NEEDS.

8. DESPITE UNFORTUNATE CONFUSION IN THE NEGOTIATING RECORD AND AMBIGUITY PRESENT IN 1972 EXCHANGE OF NOTES DEPARTMENT LAWYERS BELIEVE INTERPRETATION REFLECTED IN THE ABOVE AIDE-
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MEMOIRE IS SOUND AND CONSISTENT WITH ACCEPTED INTERNATIONAL PRACTICE IN TERMINATION OF INTERNATIONAL AGREEMENTS.

9. MOREOVER, IT IS UNREASONABLE TO EXPECT USG WOULD HAVE RETAINED SCHEDULE II CONCESSIONS ON OIL WITHOUT PROVISIONS IN UNDERLYING AGREEMENT WHICH AFFECTED THIS OBLIGATION. EMBASSY SHOULD BE AWARE OF ISSUE, HOWEVER, AS VENEZUELANS MAY RESPOND TO OUR AIDE-MEMOIRE WITH A CLAIM THAT SECURITY EXCEPTION OF TRADE AGREEMENT AS SUPPLEMENTED AND AMENDED WAS TERMINATED AS A RESULT OF 1972 EXCHANGE OF NOTES. IF THIS OCCURS, DEPARTMENT IS PREPARED TO RESPOND WITH MORE DETAILED LEGAL ARGUMENTS ON THIS POINT. CHRISTOPHER

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